

**NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION**

In the Matter of Violations of Article 33 of the  
Environmental Conservation Law ("ECL"), Part 325 of  
Title 6 of Codes, Rules and Regulations of the State of  
New York (NYCRR), and Part 170 of Title 40 of  
Code of Federal regulations by:

**Michael W. Behling d/b/a Behling's Spook Hill Farm**  
Town of Adams  
Jefferson County

**Case # R6-20120807-55**

Respondent.

**COMPLIANCE VERIFICATION AFFIDAVIT**

Michael W. Behling, being duly sworn, did depose and say that I am the owner of Behling's Spook Hill Farm, and Michael W. Behling d/b/a Behling's Spook Hill Farm has complied with Required Actions 1, 2 and 3 of Schedule A of the Consent Order dated September 4, 2012.

By: Michael W. Behling  
Title: OWNER

Subscribed and sworn to before me  
on this 14 day of September, 2012.

Becky A. Eastman  
Notary Public

**BECKY A. EASTMAN**  
Notary Public - State of New York  
No. 01EA6250690  
Qualified in Jefferson County  
Commission Expires October 31, 2015

**New York State Department of Environmental Conservation**  
**Office of General Counsel, Region 6**  
Dulles State Office Building  
317 Washington Street, Watertown, New York 13601-3787  
Phone: (315) 785-2238 • Fax: (315) 785-2242  
Website: [www.dec.ny.gov](http://www.dec.ny.gov)



September 4, 2012

Mr. Michael W. Behling  
Behling's Spook Hill Farm  
18163 Spook Hill Road  
Adams, New York 13605

RE: Consent Order # R6-20120807-55

Dear Mr. Behling:

Enclosed is a copy of the Consent Order executed on behalf of the Department and a receipt for check # 27527 in the amount of \$250.

Also, enclosed is a Compliance Verification Affidavit. Pursuant to Required Action 3 of Schedule A of the Consent Order, please sign the Affidavit before a notary public and return it to me within 45 days of the date of this letter, after Required Action 2 of Schedule A of the Consent Order has been completed.

In the meantime, please contact me if you have any questions. Thank you.

Sincerely,

Nels G. Magnuson  
Assistant Regional Attorney  
Region 6

NGM:als

Enclosures

cc: Robert Freese (w/enc.)  
Peter Taylor (w/enc.)  
Ronald J. Novak (w/enc.)  
Randall Young  
Elissa Armater (w/enc.)

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of Violations of Article 33 of the  
Environmental Conservation Law (ECL), Part 325 of  
Title 6 of Codes, Rules and Regulations of the State of  
New York (NYCRR), and Part 170 of Title 40 of Code of  
Federal Regulations (CFR) by:

Michael W. Behling d/b/a Behling's Spook Hill Farm  
Town of Adams  
Jefferson County

Respondent.

**ORDER ON CONSENT**  
**Case # R6-20120807-55**

WHEREAS:

Michael W. Behling, 18163 Spook Hill Road, Adams, New York 13605, having violated Article 33 of the ECL, Part 325 of Title 6 of the NYCRR, and Part 170 of Title 40 of the CFR at Behling's Spook Hill Farm, 12139 US Route 11, town of Adams, Jefferson County, New York, at the time and in the manner as stated below, and having waived the right to a hearing on said violations, and after due consideration having been had thereon, it appearing that this order will be advantageous to the state, now therefore,

**IT IS HEREBY ORDERED**, pursuant to the applicable provisions of the ECL and/or Rules and Regulations that:

- I. The amount of Five Hundred Fifty Dollars (\$550) shall be paid to the Department of Environmental Conservation as a penalty for the violations described below. **Three Hundred Dollars (\$300) of which is hereby suspended provided that Respondent complies with the terms of the attached Schedule A by reason of such violations.**
- II. Respondent shall comply with the terms of the attached Schedule A by reason of such violations. Respondent's failure to comply fully and in a timely fashion with any provision, term, or condition of this order shall constitute a default and a failure to perform an obligation under this order and under the ECL and shall constitute sufficient grounds for revocation of any permit, license, certification, or approval issued to Respondent by the Department.
- III. No change in this order shall be made or become effective except as set forth by a written order of the Commissioner or the Commissioner's designee.
- IV. Respondent shall indemnify and hold harmless the Department, the state of New York, and their representatives and employees for all claims, suits, actions, damages, and costs of every name and description arising out of or resulting from the fulfillment or attempted fulfillment of this order by Respondent and his successors (including successors in title) and assigns.
- V. Upon completion of all obligations created in this order, this order settles only all claims for civil and administrative penalties concerning the violations described below against Respondent and his successors (including successors in title) and assigns.

- VI. Nothing contained in this order shall be construed as barring, diminishing, adjudicating or in any way affecting any of the civil, administrative, or criminal rights of the Department or of the Commissioner or his designee (including, but not limited to, nor exemplified by, the rights to recover natural resources damages and to exercise any summary abatement powers) or authorities with respect to any party, including Respondent.
- VII. The effective date of this order is the date that the Commissioner or his designee signs it.

### CONSENT BY RESPONDENT

Respondent hereby consents to the issuing and entering of this order, waives his right to a hearing herein as provided by law, and agrees to be bound by the provisions, terms, and conditions contained in this order.

Respondent:

Michael W. Behling

By:

Michael W. Behling  
[Signature of Respondent]

Date:

### INDIVIDUAL ACKNOWLEDGMENT

STATE OF NEW YORK )  
COUNTY OF Jefferson ) ss:

On this 23 day of August, 2012, before me, the subscriber, personally came  
Michael W. Behling to me known and who by me being duly sworn, did  
depose and say that he is the person described in and who executed the foregoing Instrument, and he duly  
acknowledged to me that he signed his name thereto.

Becky A. Eastman

NOTARY PUBLIC

BECKY A. EASTMAN  
Notary Public - State of New York  
No. 01EA6250690  
Qualified in Jefferson County  
Commission Expires October 31, 2015

Dated: Watertown, New York, Sept 4, 2012

Commissioner Joseph J. Martens  
New York State Department of Environmental Conservation

By: Judy Drabicki  
Judy Drabicki  
Regional Director  
Region 6

RECEIVED  
NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION  
OFFICE OF THE COMMISSIONER  
100 N. ZEEB RD.  
ALBANY, NY 12242-1200

	Description of Violation	CITATION		Date	Location of Violation (Town / County)
		Permit # / Section (if applicable)	Environmental Conservation Law and/or Regulation		
1	<p>Respondent Michael W. Behling while using a pesticide did not follow the directions on the label by failing to comply with Federal Worker Protection Standards (40 CFR 170), including the following:</p> <ul style="list-style-type: none"> <li>a) 40 CFR 170.122 requires agricultural employers to provide workers with specific information about pesticide applications at the agricultural establishment;</li> <li>b) 40 CFR 170.130(a) requires agricultural employers to provide each worker with safety training; and,</li> <li>c) 40 CFR 170.135 requires agricultural employers to display pesticide safety information for workers.</li> </ul>		6 NYCRR §325.2(b)	July 25, 2012	Adams / Jefferson County

**NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION**

**Respondent's Name: Michael W. Behling d/b/a Behling's Spook Hill Farm**

**No. R6-20120807-55**

**SCHEDULE A**

**To settle violations of the New York State Environmental Conservation Law, the above-referenced Respondent shall, on or before the dates indicated:**

<b>REQUIRED ACTION</b>		<b>DUE DATE</b>
1.	Submit civil penalty payment of Two Hundred Fifty Dollars (\$250).	On the effective date of this order.
2.	Respondent shall comply with the Federal Worker Protection Standards (WPS) (40 CFR 170) and submit to the Department documentation showing compliance with the following WPS: a) 40 CFR 170.122 requires agricultural employers to provide workers with specific information about pesticide applications at the agricultural establishment; b) 40 CFR 170.130(a) requires agricultural employers to provide each worker with safety training; and, c) 40 CFR 170.135 requires agricultural employers to display pesticide safety information for workers.	Within 30 days of the effective date of this order.
3.	Respondent shall submit a signed and notarized Compliance Verification Affidavit to the Department certifying that actions necessary to come into compliance with the Department's regulatory program, and those actions specified in this Consent Order, have been completed.	Within 45 days of the effective date of this order.

Any payment required by this order shall be sent to the Department at the following address:

New York State Department of Environmental Conservation  
317 Washington Street  
Watertown, New York 13601-3787  
Attention: Regional Attorney

Any communication or submissions required by this order shall be sent to the Department at the following address:

Robert Freese  
Pesticide Control Specialist I  
Department of Environmental Conservation, Region 6  
317 Washington Street  
Watertown, New York 13601-3787

To: Mr. Michael W. Behling  
Behling's Spook Hill Farm  
18163 Spook Hill Road  
Adams, New York 13605

**New York State Department of Environmental Conservation**  
**Division of Materials Management**  
Bureau of Pest Management  
Dulles State Office Building, 7<sup>th</sup> Floor  
317 Washington St., Watertown, NY 13601  
**Phone:** (315) 785-2614 • **Fax:** (315) 785-2422  
**Website:** [www.dec.ny.gov](http://www.dec.ny.gov)



August 2, 2012

## **NOTICE OF VIOLATION**

Michael Behling  
18163 Spook Hill Rd  
Adams, NY 13605

Dear Mr. Behling:

The Department is responsible for the administration and enforcement of laws and regulations pertaining to pesticides in the State of New York, including Articles 15, 33, and 71 of the ECL, and Parts 320-329 of Title 6 of the Official Compilation of Codes, Rules, and Regulations of New York State ("6 NYCRR").

On July 25, 2012 Department staff inspected your business, Behling's Spook Hill Farm, to determine compliance with the above. The following violations were noted during the inspection:

### **ENFORCEABLE PROVISIONS OF LAW**

#### ***Failure to follow label directions:***

1. Section 325.2(b) of 6 NYCRR requires that registered pesticides be used only in accordance with label directions or as modified or expanded and approved by the Department. During this inspection, it was determined that you were not in compliance with the Worker Protection Standard. Not complying with the worker protection Standard is a violation of Section 325.2(b) of 6 NYCRR.
2. 40 CFR 170.130 requires that all workers must receive pesticide safety training using United States Environmental Protection Agency approved training materials. This training must also be documented. You admitted during our inspection that you did not provide pesticide safety training to your workers as required by the Worker Protection Standard, and therefore are in violation of 40 CFR 170.130.

3. 40 CFR 170.122 requires an agricultural employer to display information about pesticides used for 30 days after their REI expires. The information to be displayed includes:
- (1) The location and description of the treated area.
  - (2) The product name, EPA registration number, and active ingredient(s) of the pesticide.
  - (3) The time and date the pesticide is to be applied.
  - (4) The restricted-entry interval for the pesticide.

Further, 40 CFR 170.135 requires an agricultural employer to display a pesticide safety poster at a central location that conveys basic pesticide safety concepts and information about the nearest emergency medical facility. You did not have the required information about the pesticides used or a safety poster at a central location and were therefore in violation of 40 CFR 170.122 and 40 CFR 170.135.

PURSUANT TO ECL 33-1501, YOU ARE HEREBY DIRECTED TO CEASE AND DESIST FROM FURTHER VIOLATION OF ANY PROVISION OF THE ECL, AND ANY RULES AND REGULATIONS PROMULGATED PURSUANT THERETO. ANY CONTINUED VIOLATION MAY BE CONSIDERED A WILLFUL OFFENSE WHICH COULD SUBJECT YOU TO CRIMINAL SANCTIONS.

Please be advised that the ECL provides for civil and criminal penalties of up to \$10,000 per violation and/or one year imprisonment for any person who violates any provision of ECL Article 33 or any rule, regulation or order issued thereunder.

Please also be advised that this matter has been forwarded to our regional attorney for further action. Someone from their office may contact you to discuss the violations documented above.

Sincerely,



Robert Freese  
Pesticide Control Specialist I

cc: Randall Young  
Inspection file:

Behling's Spook Hill Farm  
12139 US RTE 11  
Adams Center, NY 13606



NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION  
DIVISION OF SOLID AND HAZARDOUS MATERIALS • BUREAU OF PESTICIDES MANAGEMENT  
www.dec.state.ny.us

## INSPECTION REPORT COVER SHEET

Inspection #: <u>072512RF301</u>	Name of Person Contacted: <u>Michael Behling</u>
Name of Business: <u>Behling's Spook Hill Farm</u>	Official Position: <u>Owner</u>
Street Address: <u>18163 Spook Hill Rd</u>	Post Office Address: <u>NA</u>
City/State/Zip Code: <u>Adams, NY 13605</u>	City/Village/Township: <u>NA</u>
Telephone Number: <u>(315) 778-7268 cell</u>	County: <u>Jefferson</u>

Inspector's Initials	Name of Inspection Form	Form Number
<u>RF</u>	Notice of Inspection	NOI
<u>RF</u>	Pesticide Applicator/Business/Use Inspections	USE
<u>RF</u>	Worker Protection Standard Inspection	WPS
	Liquid Termiticide Use Checklist	TER
	Ornamental and Turf Checklist	T&O
	Voluntary Statement	VOL
	Receipt for Samples	SAM
	Market Place/Restricted Dealers Records Inspection	MKT
	Market Place/Restricted Dealer Records Inspection Continuation Sheet	MPC
	Quarantine Order	QRN
	Quarantine Order Release	QOR
	Experimental Use Permit Checklist	EUP
	Authorization for Medical Record Disclosure	MED

Inspector's Signature: Robert Meehan Number: RF2 Date: 7/25/12

Inspection Acknowledgment: I acknowledge receiving a copy of the above listed inspection documents initiated by the inspector.

Signature: Michael W. Behling Date: 7/25/12

Print Name: Michael W. Behling



NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION  
DIVISION OF SOLID AND HAZARDOUS MATERIALS • BUREAU OF PESTICIDES MANAGEMENT  
www.dec.state.ny.us

☒ NOTICE OF INSPECTION

☐ USE/MISUSE INSPECTION

INSPECTION # 072512RF201	DATE July 25, 2012	TIME 10:00 AM PM	REGION 6
NAME OF INDIVIDUAL Michael Behling		TITLE Owner	
NAME OF FIRM (Note if corporation, partnership, dba, etc) Behling's Spook Hill Farms			
ADDRESS This is the address of the: <input checked="" type="checkbox"/> INSPECTION SITE <input type="checkbox"/> FIRM <input type="checkbox"/> INDIVIDUAL 12139 US Rte 11			
CITY / VILLAGE Adams Center		STATE NY	ZIP 13606
TOWNSHIP	COUNTY Jefferson	PHONE (315) 583-3550	

## REASON FOR INSPECTION

- ☐ For the purpose of inspecting and obtaining samples of any pesticides or devices packaged, labeled and released for shipment, samples of any containers or labeling for such pesticides or devices in places where pesticides or devices are produced, or held for distribution or sale.
- ☒ For the purpose of inspecting and obtaining samples of mandated records.
- ☒ For the purpose of inspecting the use of pesticides and sampling pesticides in use to determine if they are being used in compliance with appropriate laws and rules and regulations.
- ☒ For the purpose of inspecting sites where pesticides are being used to collect data on the use of pesticides and to determine whether pesticides are being used in compliance with appropriate laws and rules and regulations.
- ☒ Other - To conduct a WPS inspection.

## VIOLATION SUSPECTED

None

## CONSENT USE/MISUSE

Voluntary Consent Necessary to Enter for Inspection and/or Sampling.

- ☐ The undersigned hereby voluntarily consents to an inspection of \_\_\_\_\_ of which I am the owner, Agent, or Person-in-Charge, for the purposes of gathering information and/or samples in connection with the administration and enforcement of Article 33 and Section 15-0313 of the Environmental Conservation law relating to pesticides. I understand that I have the right to refuse consent to this entry.

SIGNATURE

TITLE

DATE

This inspection is being performed under authority granted by Article 33 and Section 15-0313 of Article 15 of the Environmental Conservation law relating to pesticides and the Federal Insecticide, Fungicide and Rodenticide Act as amended (7 U.S.C. 136 et seq.).

## INSPECTOR INFORMATION

NAME Robert Freese	TITLE PES-1	ID NUMBER RF2	PHONE NUMBER (315) 785-2617
SIGNATURE Robert Freese	OFFICE LOCATION 317 Washington Watertown, NY 13604	ACCOMPANIED BY	



# PESTICIDE APPLICATOR/BUSINESS/USE INSPECTIONS

INSPECTION NUMBER <b>072512 RF201</b>		FIRM/FACILITY/PERSON INTERVIEWED <b>Michael Behling Behling's Spook Hill Farm</b>		EQUIPMENT TYPE/SIZE <b>200 gallon sprayer</b>					
TYPE OF INSPECTION: <input type="checkbox"/> Business/Agency <input checked="" type="checkbox"/> Applicator		SITE OF INSPECTION <b>12139 U.S. Rt 11 Adams Center NY 13606</b>							
<input type="checkbox"/> Non-agricultural use <input checked="" type="checkbox"/> Agricultural use		INSURANCE COMPANY/EXPIRATION DATE <b>NA</b>							
BUSINESS REG. NO./EXPIRATION DATE <b>NA</b>									
APPLICATOR NAME/CERTIFICATION TYPE <b>Michael Behling Private</b>		CERTIFICATION ID <b>P686297</b>	CATEGORY/EXPIRATION <b>22 2/21/67</b>	SUPERVISED BY <b>NA</b>					
DATE/TIME/WEATHER CONDITIONS DURING APPLICATION <b>7/15/12 2) 7/5/12</b>		CROP <b>Strawberry</b>	SITE/SIZE <b>Field A, 1/2 of B. and Field C</b>		TARGET PESTS <b>Weeds</b>				
PESTICIDE NAME/EPA REG NO.		METHOD OF APPLICATION	CLASSIFICATION	FORMULATION	LABEL RATE OBSERVED RATE				
<b>1) Sinbar WDG 352-317</b>		<b>field sprayer</b>	<b>restricted</b>		<b>2-600/acre 500/acre</b>				
<b>2) Ammix 4 34704-120</b>		<b>field sprayer</b>			<b>1.6 qt/acre 2 qts/acre</b>				
LABEL/EQUIPMENT REQUIREMENTS	REFERENCE SECTION	Yes	No	NA	APPLICATOR REQUIREMENTS	REFERENCE SECTION	Yes	No	NA
Label Rate Followed	325.2(b)	✓			Apprentices Properly Supervised	325.7(d)			✓
Target Pests on Label	325.2(b)	✓			Apprentices Trained/Documented	325.10(a)			✓
PPE/Cautionary Labeling Followed	325.2(b)	✓			Apprentice Variance Approved	325.10(b)			✓
Preharvest Interval/REI per Label	325.2(b)	✓			I. D. Card in Possession During Use	325.7(a)	✓		
Crop/Area Treated per Label	325.2(b)	✓			Label in Possession During Use	325.2(d)	✓		
Pesticide Containers Properly Labeled	33.1301(1)(b)	✓			Notification Requirements Met	33-0905(5)			✓
Service Containers Properly Labeled	33.1301(1)(b)			✓	REPORTS/RECORDS	33-1205(1)	Yes	No	NA
Containers Properly Rinsed and Disposed	325.4(a)				EPA Reg. No.		✓		
Backflow Prevention/Air Gap Present	325.2(c)	✓			Product Name		✓		
Proper Stickers on Equipment/Vehicles	325.26			✓	Quantity		✓		
Equipment Properly Calibrated		✓			Date Applied		✓		
Storage Locked/Containers Secure			✓		Address				✓
Warning Signs Posted		✓			Place of Application		✓		
Location of Container Disposal: <b>regular sanitation</b>					Dosage Rate		✓		
Location of Pesticide Storage: <b>barn</b>					Method of Application		✓		
Water Source: <b>village water</b>					Target Organism/Crop Treated		✓		
Pesticide Mixing Area: <b>behind market</b>					Records Kept 3 Years				✓
REMARKS: <b>This is the first year Mr. Behling has kept records. He says he only used general use pesticides the previous years and he had no agricultural workers last year.</b>									
INSPECTOR'S SIGNATURE <b>Robert Dineen</b>		DATE AND TIME INSPECTED <b>7/25/12 12:00 PM</b>							



NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION  
DIVISION OF SOLID AND HAZARDOUS MATERIALS • BUREAU OF PESTICIDES MANAGEMENT  
www.dec.state.ny.us

## WORKER PROTECTION STANDARD INSPECTION

Inspection # <u>072512RF201</u>	Date: <u>July 25, 2012</u>	Inspection: <input checked="" type="checkbox"/> Unannounced <input type="checkbox"/> Appointment
Firm/Farm Name <u>Behling's Spack Hill Farm</u>	Inspection Type: Tier I <input checked="" type="checkbox"/> or Tier II <input type="checkbox"/>	
Type of Establishment: (check all applicable): <input checked="" type="checkbox"/> Farm <input type="checkbox"/> Greenhouse <input type="checkbox"/> Nursery <input type="checkbox"/> Family establishment <input type="checkbox"/> Research <input type="checkbox"/> Forest		
Approx. total area of establishment: <u>19-25 acres</u>	Principal crops: <u>Strawberries</u>	
# of certified applicators with establishment: <u>1</u>	Name of person(s) directing/controlling pesticide use: <u>1</u>	
Who applies pesticides? (check all applicable): <input checked="" type="checkbox"/> Owner <input type="checkbox"/> Employee <input type="checkbox"/> Custom Applicator		
Note: For data in this block, estimates provided by the establishment are sufficient.		
# present at this inspection:	workers <u>4</u>	handlers <u>0</u>
# of permanent employees:	workers <u>0</u>	handlers <u>0</u>
1. # present during last pesticide application:	workers <u>4</u>	handlers <u>0</u>
2. (or for the last 30 days) (circle one)	workers <u>4</u>	handlers <u>0</u>

### INFORMATION AT A CENTRAL LOCATION

40 CFR 170.122/135

How to Comply Manual

	Page #
<u>NA</u> <u>Y</u> <input checked="" type="checkbox"/> Is the approved SAFETY POSTER displayed?	23
<u>NA</u> <u>Y</u> <input checked="" type="checkbox"/> Is EMERGENCY MEDICAL INFORMATION displayed? (name, address & telephone number)	24
<u>NA</u> <u>Y</u> <input checked="" type="checkbox"/> Is the site LOCATED where it can be readily seen and read by workers & handlers?	24
<u>NA</u> <u>Y</u> <input checked="" type="checkbox"/> Are workers & handlers INFORMED of the location and are they allowed ACCESS to the site?	24
<u>NA</u> <u>Y</u> <input checked="" type="checkbox"/> Does the information remain LEGIBLE while posted?	24
<u>NA</u> <u>Y</u> <input checked="" type="checkbox"/> Is the following APPLICATION INFORMATION displayed? -Location and Description of the treated area; - Product Name; -EPA REG #; - Active Ingredient(s) of the pesticide; -Time & Date of application; - REI (restricted entry interval)	23

Comments (explain NA): Mr. Behling doesn't have a central location.

### PESTICIDE EXPOSURE INCIDENTS/EMERGENCY ASSISTANCE

40 CFR 170.160

How are incidents reported for employees who become sick/injured by pesticides? call Mr. Behling

<u>NA</u> <u>Y</u> <input checked="" type="checkbox"/> Is prompt transportation to emergency medical facility available for employees who become sick/injured by pesticides?	36
<u>NA</u> <u>Y</u> <input checked="" type="checkbox"/> Is information provided to medical personnel regarding the pesticide to which employees may have been exposed?	36

Who is the person responsible for providing transportation and pesticide information? Mr. Behling

Y ☒ Have there been any pesticide exposure incidents on this farm? If yes, give details: \_\_\_\_\_

Comments (explain NA): none

### EMPLOYER/CUSTOM APPLICATOR INFORMATION EXCHANGE ☒ NA (no custom applications) 40 CFR 170.124 & 170.224

<u>NA</u> <u>Y</u> <input type="checkbox"/> Does the ag establishment notify the custom applicator regarding the location of treated areas and REIs?	34
<u>NA</u> <u>Y</u> <input type="checkbox"/> Does custom applicator notify the ag establishment of required application information before the application?	33

How is the information exchanged? When/with whom? \_\_\_\_\_

Inspection # 072512 REF201

**PESTICIDE SAFETY TRAINING ASSURANCE**

**40 CFR 170.130**

**How to Comply Manual**  
**Page #**

**WORKERS:** (Applies to workers who are NOT certified applicators or trained handlers)

- ☐ NA ☒ Y ☐ N Does Ag Employer ASSURE that workers have been trained within the last five years? 25
- ☒ NA ☐ Y ☐ N Does Ag Employer ASSURE that workers have been trained *before EARLY ENTRY* activities during an REI? 25
- ☐ NA ☐ Y ☐ N Is the Ag Employer able to VERIFY that the required PESTICIDE SAFETY INFORMATION was provided to workers *before entry into any area on an ag establishment* where WPS pesticides have been applied within the last 30 days? 26
- ☐ NA ☒ Y ☐ N Does Ag Employer ASSURE that workers have received the required ADDITIONAL TRAINING *before the sixth day of entry into any area on an ag establishment* where WPS pesticides have been applied within the last 30 days? 25/26

**HANDLERS:** (Applies to handlers who are NOT certified applicators or certified crop advisers)

**40 CFR 170.230**

- ☒ NA ☐ Y ☐ N Does Ag Employer ASSURE that handlers have been trained within the last five years? 25/26
- ☒ NA ☐ Y ☐ N Does Ag Employer ASSURE that handlers have been trained *before performing any handling task*? 25/26

How is training verified for both workers and handlers? WPS training has not been done

Comments (explain NA): No early entry activities take place and no handlers employed.

**PESTICIDE SAFETY TRAINING PROGRAM**

☐ NA (if workers trained elsewhere)

**40 CFR 170.130/230**

- ☐ NA ☒ Y ☒ N **WORKERS & HANDLERS:** Is the information presented in a manner that the workers & handlers can understand (such as through a translator & using nontechnical terms & presenter answers questions)? 27
- ☐ NA ☒ Y ☒ N **WORKERS:** Does the PESTICIDE SAFETY INFORMATION meet the criteria listed in 170.130(c)? 26
- ☐ NA ☒ Y ☒ N **WORKERS:** Does the content of the ADDITIONAL TRAINING materials meet the criteria listed in 170.130(d)(4)? 103
- ☐ NA ☒ Y ☒ N Is trainer qualified to train WORKERS? (certified applicator or authorized by DEC) 26
- ☐ NA ☒ Y ☒ N **HANDLERS:** Does the content of the training materials meet the criteria listed in 170.230(c)(4)? 104
- ☐ NA ☒ Y ☒ N Is the trainer qualified to train HANDLERS? (certified applicator or authorized by DEC) 26

Who trains workers/handlers? \_\_\_\_\_ When/how often? \_\_\_\_\_

Comments (explain NA): No training done

**DECONTAMINATION SITES**

The employer must adhere to the following decontamination requirements for **WORKERS and HANDLERS:** **40 CFR 170.112/150/250**

- ☐ NA ☒ Y ☐ N Do decontamination sites have soap, single-use towels, and enough water for washing & emergency eye flushing? 29-31
- ☐ NA ☒ Y ☐ N Is the decontamination water of a quality & temperature as required? 29
- ☒ NA ☐ Y ☐ N Is one pint of eye flush water immediately available to handlers using pesticides requiring protective eye wear and to early entry workers when working in areas treated with pesticides requiring protective eye wear for early entry? 31/68
- ☐ NA ☒ Y ☒ N Is the decontamination site within 1/4 mile of the work site and out of areas being treated or under REI? 30/31
- ☐ NA ☒ Y ☒ N Are decontamination sites provided for workers entering treated areas until 30 days following expiration of the REI? 29
- (Exception: Pesticides with a four-hour REI require decontamination site for only seven days.)
- ☒ NA ☐ Y ☐ N Are decontamination sites provided for early entry workers during and after early entry? 67/68

The employer must adhere to the following decontamination requirements for **HANDLERS:**

**40 CFR 170.250**

- ☐ NA ☐ Y ☐ N Is enough water provided to handlers for washing the entire body in case of an emergency? 30
- ☐ NA ☐ Y ☐ N Is one clean change of clothing provided to handlers for use in an emergency? 30
- ☐ NA ☐ Y ☐ N Are decontamination supplies located at the mix/load site? 30/31
- ☐ NA ☐ Y ☐ N Are decontamination supplies for PILOTS kept in the airplane or at the aircraft loading site? 30
- ☐ NA ☐ Y ☐ N Are handler decontamination supplies kept out of treated areas unless they are in enclosed containers? 31
- ☐ NA ☐ Y ☐ N Are decontamination supplies located where handlers remove PPE for washing thoroughly after handling activities? 31

Comments (explain NA): Decon site is at the market across the street which may be more than 1/4 mile. No decon supplies are available in the field.

Inspection # 072512RF201

## ADDITIONAL DUTIES FOR WORKER EMPLOYERS

40 CFR 170.110

How to Comply Manual  
Page #

### RESTRICTIONS DURING APPLICATIONS

- ☒ NA ☐ Y ☐ N Are workers prohibited in treated areas during application and until REIs have expired? 45
- ☒ NA ☐ Y ☐ N Are workers prohibited in treated areas plus the additional buffer area during application in NURSERIES? 51/52
- ☒ NA ☐ Y ☐ N Are workers prohibited in a GREENHOUSE during application and until ventilation criteria are met? 53-55

### NOTICE OF APPLICATIONS TO WORKERS

40 CFR 170.120

- ☒ NA ☐ Y ☐ N Are all GREENHOUSE applications posted with WPS warning signs? 42
- ☒ NA ☐ Y ☐ N Are workers given BOTH oral and posted notification when required by the pesticide label? 41-44
- ☐ NA ☒ Y ☐ N Are workers given notification of applications (EITHER orally or posted) for other applications? 41-44
- ☐ NA ☒ Y ☐ N Are workers told which method will be routinely used at this firm (oral or posted notification)? - circle one 41

Who notifies workers? Mr. Behling

- ☐ NA ☒ Y ☐ N Have any early entry activities occurred?
- ☐ NA ☐ Y ☐ N Were workers informed of label restrictions re: early entry?

#### Posted Warning Signs ☐ NA for all

- ☐ NA ☐ Y ☐ N Does the employer use the approved WPS warning signs for posted notification? 42/43
- ☐ NA ☐ Y ☐ N Are the signs posted at all entrances of worker entry to the treated area? 42
- ☐ NA ☐ Y ☐ N Are the signs put up no sooner than 24 hours prior to application? 43
- ☐ NA ☐ Y ☐ N Are the signs removed within three days after the end of the REI? 43
- ☐ NA ☐ Y ☐ N Are the signs posted along the border of any labor camp adjacent to the treated area? 42

#### Oral Warnings ☐ NA for all

- ☐ NA ☒ Y ☐ N Are oral warnings given in a language (s) understood by workers? 44
- ☐ NA ☒ Y ☐ N Do oral warnings include: 1) location & description of treated area; 2) REI; 3) instructions not to enter during the REI? 44

Comments (explain NA): Mr. Behling doesn't use warning signs.

## ADDITIONAL DUTIES FOR HANDLER EMPLOYERS

### APPLICATION RESTRICTIONS & MONITORING

☒ NA if no handlers employed 40 CFR 170.210

- ☐ NA ☐ Y ☐ N \*Do both the employer & the handler assure that no pesticide is applied (either directly or through drift) so as to contact anyone other than trained and PPE-equipped handlers: 73
- How is this verified?
- ☐ NA ☐ Y ☐ N Are handlers monitored visually or by voice every two hours when handling SKULL & CROSSBONES pesticides? 73
- ☐ NA ☐ Y ☐ N Does the handler have a continuous visual or voice contact with another trained and PPE-equipped handler when handling a FUMIGANT in a GREENHOUSE? 73/74

### SPECIFIC INSTRUCTIONS FOR HANDLERS

☒ NA if no handlers employed 40 CFR 170.232

- ☐ NA ☐ Y ☐ N Does the employer assure that handlers read the label or are informed (in a manner they can understand) about the label requirements for safe use before performing any handling activity? 75
- ☐ NA ☐ Y ☐ N Does the handler have access to the product labeling during handling activities? 75

### SAFE OPERATION OF EQUIPMENT

☒ NA if no handlers employed 40 CFR 170.234

- ☐ NA ☐ Y ☐ N Is the handler instructed in the safe operation of handling equipment before it is used? By whom? 75
- ☐ NA ☐ Y ☐ N Is handling equipment inspected and repaired before each day of use? 77
- ☐ NA ☐ Y ☐ N Does the employer assure that only trained and PPE-equipped handlers repair, clean or adjust any handling equipment that contains pesticides or pesticide residues? 77

Comments (explain NA):

**PERSONAL PROTECTIVE EQUIPMENT REQUIREMENTS FOR HANDLERS/EARLY ENTRY WORKERS**

40 CFR 170.112/240

- ☐ NA ☐ Y ☐ N Does the employer provide the handler/early entry workers with the appropriate PPE in clean and operating condition? 79
- ☐ NA ☐ Y ☐ N Does the employer assure that instruction on use and cleaning of PPE is given and that it is worn and used correctly? 79
- Who gives instructions and assures use of PPE? \_\_\_\_\_
- ☐ NA ☐ Y ☐ N Does the employer assure that PPE is inspected, cleaned, stored properly & repaired or replaced before each day of use? 79
- ☐ NA ☐ Y ☐ N Does the employer assure that filters are replaced on respirators when required? 80
- ☐ NA ☐ Y ☐ N Do handlers/early entry workers have a clean place to store personal clothing, put on PPE and remove PPE after use? 79
- Where is it located? \_\_\_\_\_
- ☐ NA ☐ Y ☐ N Is contaminated PPE disposed of properly? 79
- ☐ NA ☐ Y ☐ N Does the employer take appropriate measures to prevent heat-related illness for handlers/early entry workers using PPE? 79
- ☐ NA ☐ Y ☐ N Have handlers refused to wear proper PPE?

From labels of agricultural pesticides documented in an accompanying AUO inspection, list the following (for up to 4 products):

	Product Name	REI	PPE
1	Sinbar WDG	12	Coveralls, chemical resistant gloves, shoes plus socks
2	Amine 4	48	" plus eye wear
3			
4			

If the label for any of the above products does not include agricultural use requirements - state so above.

Comments (explain NA):

**WORKER AND HANDLER INTERVIEWS**

- ☒ Y ☐ N Were any workers or handlers interviewed? (circle which were) If no for either, explain why an interview was not conducted.

Mr. Behling admitted to not training his workers.

40 CFR 170.104/110/112/124/224/240

**FAMILY ESTABLISHMENTS**

- ☐ NA ☐ Y ☐ N Are employees only spouse, children, stepchildren, foster children, parents, stepparents, foster parents, brothers, sisters? 91
- If NO, skip this section.
- ☐ NA ☐ Y ☐ N Are non-handlers prohibited in treated areas during application and until REIs have expired? 92
- ☐ NA ☐ Y ☐ N Are non-handlers prohibited in treated areas plus the additional buffer area during application in NURSERIES? 92
- ☐ NA ☐ Y ☐ N Are non-handlers prohibited in a GREENHOUSE during application and until ventilation criteria are met? 92
- ☐ NA ☐ Y ☐ N Are early entry workers prohibited in treated areas during the first four hours after application? 93
- ☐ NA ☐ Y ☐ N Are early entry workers limited to one hour of work in a 24-hour period in treated areas during the REI? 93
- ☐ NA ☐ Y ☐ N Are early entry workers who perform irrigation and limited contact activities limited to eight hours of work in a 24-hour period? 93
- ☐ NA ☐ Y ☐ N Is the correct PPE for early entry PROVIDED for early entry activities at this firm? 92
- ☐ NA ☐ Y ☐ N Does the handler at this firm wear the label-specified PPE during handling tasks? 92
- ☐ NA ☐ Y ☐ N Is the label-specified PPE for handling activities at this firm PROVIDED in clean and operating condition? 92
- ☐ NA ☐ Y ☐ N Does this establishment notify commercial handlers regarding location of treated areas and REIs on the establishment? 92
- ☐ NA ☐ Y ☐ N Do commercial handlers notify this establishment of required application information before application takes place? 92

Comments (explain NA):

Not a family establishment

Additional Comments:

none

Print name of inspector Robert Greer	Print name of person interviewed Michael Behling
Signature of inspector Robert Greer	Signature of person interviewed Michael W. Behling

**INSPECTION #:** 072512RF201

**FIRM:** Behling's Spook Hill Farm  
12139 US RTE 11  
Adams Center, NY 13606

Mailing Address: 18163 Spook Hill Rd  
Adams, NY 13605

**CONTACT PERSON:** Michael Behling, Owner  
(315) 778-7268 cell  
(315) 583-3550 store

**INSPECTION DATE:** July 25, 2012

**DATE OF REPORT:** July 27, 2012

**NARRATIVE:**

On July 25, 2012, I inspected Behling's Spook Hill Farm in Adams, NY. I met with the owner, Mr. Michael Behling. I showed him my state credentials and issued him a Notice of Inspection. I explained to him that the purpose of the inspection was to determine if he's in compliance with NYS's pesticide laws and regulations, as well as the federal Worker Protection Standard requirements.

Mr. Behling's farm consists of less than 25 acres of u-pick strawberry fields. He also owns a flower and produce shop across the street from the farm. This inspection was conducted in his office in back of the produce store. Mr. Behling first became a certified private applicator in 1978. He let his card expire in 2010 and then reacquired it on February 3, 2012. He is currently certified in category 22, Fruit, and his card expires in 2017. A copy of his CertAdmin record will be included in this report.

According to Mr. Behling, he only used general use pesticides and had a certified family member do a little spraying for him while his certification was lapsed. He also stated that for the past few years, he had no employees besides family members. He just recently reacquired the flower and fruit stand and is currently expanding his operation. He talked about doing tomatoes and corn next year. He presently has four workers who do field work and would be considered agricultural workers.

**CAR and AUO\* INSPECTIONS**

I inspected Mr. Behling's pesticide application records which consisted of a spiral notepad. He only had records for this season. All of the information required of a private applicator was there except his records of restricted use pesticides purchased. However, he did keep all of his receipts. I gave Mr. Behling a copy of DEC's private applicator record keeping form and suggested that he try it. On the back of the form is a place to record the pesticides purchased. No violations were observed in regards to his record keeping.

I then looked at the past two applications he made on July 5<sup>th</sup> and 15<sup>th</sup>, 2012. I asked him for copies of the pesticide labels for the two products he used and I compared his dosage rates to the label rates. The products were labeled for strawberries and he appears to have used them according to label directions. No violations were observed.

## **WPS INSPECTION**

Mr. Behling currently has four seasonal workers that do agricultural tasks in the field. I also established that they've been in the fields within 30 days of the last REI. Mr. Behling did not have a central location setup. Mr. Behling keeps his spray records, pesticide labels, and MSDS sheets in the bottom drawer of his filing cabinet. He says he told all four workers where he keeps this information and that they were free to look at it anytime. He thought that was all he had to do to be in compliance with the workers "Right to Know" law.


I gave Mr. Behling the safety poster that's required to be hung at the central location and told him to display his spray records. His current spray records contain REIs and the other required information.

We then discussed training. Mr. Behling admitted that he hadn't provided the workers with the formal WPS training but did provide them with some safety information. He stated that he'd order some training materials from Gempler's and train them as soon as possible.

Another issue we discussed was decontamination supplies. The produce shop has bathrooms and an employee washing station with soap and towels. I asked if the workers in the field have any supplies with them and he said they didn't. He says they wash up during breaks at the produce shop. The fields across the street from the produce shop are probably a little more than a quarter mile away and the WPS requires the supplies be within that distance. When I told Mr. Behling that, he stated that they're also allowed to use his house for bathroom breaks and that his house is closer. The employees take a work truck with them to the field, so I instructed him to put water, soap, and towels in the truck to ensure compliance.

## **VIOLATIONS**

I found Mr. Behling to be in violation of Sections 170.130(a), 170.122, and 170.135 of 40 CFR for failing to have a central location with the required information displayed and for not training his workers as required. Not complying with the WPS requirements can be considered a violation of Part 325.2(b) for not following label directions. I completed the WPS Civil Penalty Calculation Worksheet and found that he should be subject to a small fine. A copy of the worksheet will be included in this report. A Notice of Violation will be mailed to Mr. Behling at his home address and this inspection report will be forwarded to Region 6's OGC for possible enforcement action.

  
Robert Freese  
PCS-I, Region 6